

Distinguishing Land Use Plan Decisions from Implementation Decisions

The purpose of this Attachment is to provide further clarification about the differences between land use plan decisions and implementation decisions. This discussion is designed to (1) help distinguish the types of decisions that are land use plan decisions from those that are implementation decisions, (2) increase consistency across BLM in describing land use plan decisions and implementation decisions, and (3) provide a basis for understanding the administrative framework in which the public may have the decisions reviewed (protests or appeals).

Some program-specific regulations describe additional administrative review processes for BLM decisions (e.g. grazing permits, timber sales, oil and gas lease sales, etc). Those administrative reviews are not discussed here.

The history of Interior Board of Land Appeals (IBLA) decisions on whether to hear an appeal provides legal guidance as to the distinction between implementation and land use plan decisions. Because the IBLA will generally only hear appeals for implementation decisions, BLM can use these past precedents to help categorize decisions and their associated administrative remedies. Examples of IBLA decisions are included here to help illustrate the distinction between land use plan decisions and implementation decisions. These examples are not intended to address every resource program, however.

Land Use Plan Decisions

Land use plan decisions consist of desired outcomes (goals, standards, and objectives) and the allowable uses (including allocations, levels of use, and restrictions on use) and management actions necessary to achieve those outcomes. Land use plan decisions provide management direction and guide future actions. When land use plan decisions are proposed, the public has an opportunity to protest them to the BLM Director prior to their approval, as set forth in the planning regulations (CFR 1610.5-2). The Office of Hearings and Appeals (OHA) does not have jurisdiction to review land use plan decisions. Thus, there are no further administrative remedies.

Protests of the proposed decision to approve or amend a Resource Management Plan (RMP) based on an EIS level of NEPA analysis must be filed with the BLM Director within 30 days of the date the Environmental Protection Agency (EPA) publishes in the Federal Register the Notice of Availability for the Final EIS and proposed RMP (or RMP amendment), according to the provisions of 43 CFR 1610.5-2. Protests on EA level RMP amendments must be filed with the BLM Director within 30 days of the date BLM provides public notification of the proposed RMP amendment. The decision to approve or amend an RMP constitutes the final decision of the Department of the Interior and is not appealable to the IBLA (43 CFR 1610.5-2 (b)). Land use plan decisions become effective upon approval of the Record of Decision (ROD), or Decision Record (DR) for EA-level RMP amendments.

Implementation Decisions

Implementation decisions generally constitute BLM's final approval allowing on-the-ground actions to proceed. These types of decisions require site-specific planning and NEPA analysis. For the most part, unlike land use plan decisions, implementation decisions are not subject to protest under the planning regulations. Instead, implementation decisions are subject to various administrative remedies, primarily appeals to the OHA. Where implementation decisions are made as part of the land use planning process, they are still subject to the appeals process or other administrative review as prescribed by specific resource program regulations after BLM resolves the protests to land use plan decisions and makes a decision to adopt or amend the RMP.

High Desert Multiple -Use Coalition, Inc. et al. Keith Collins, 142 IBLA 285 (1998): The Board stated that its jurisdiction is limited to decisions implementing an approved plan. "Implementation is the touchstone of the Board's jurisdiction, regardless of the form that such decisions may take, i.e., jurisdiction extends to individual activity plans and RMPs only when the latter contain both planning and implementing actions."

Land use planning decisions can be distinguished from implementation decisions in that, although they are themselves final and effective upon adoption, they normally require additional decision steps (such as permit approvals) before activities having on-the-ground impacts can be carried out.

BLM Administrative Designations (ACECs, SRMAs, etc.)

A decision to designate lands as an Area of Critical Environmental Concern (ACEC), Special Recreation Management Area (SRMA), or certain other administrative designations is a land use plan decision. A decision to approve site-specific actions, process withdrawals, or approve/deny proposed use applications in the designated area is an implementation decision.

Vegetation

Establishing desired vegetation management goals is a land use plan decision. An RMP may identify areas, acreage, and frequency of vegetation treatment activities such as prescribed burns or treating invasive and noxious weeds. However, additional site-specific planning and NEPA analysis may be necessary before the project(s) can be implemented. The decision to approve an on-the-ground vegetation treatment is an implementation decision.

Fluid Minerals

Making lands open to oil and gas leasing, and establishing the types of restrictions to be applied if leases are issued, are land use plan decisions. A decision to offer lands for leasing at a lease sale may be protested to the Authorized Officer prior to the sale. The denial of a protest to a lease sale, however, and the issuance of a lease, as well as the attached stipulations, are implementation decisions subject to the administrative review procedures set forth in 43 CFR 3120.1-3, and are appealable to IBLA. Approval or disapproval of an application for permit to drill (APD) with attached restrictions or

conditions of approval (COAs) is also an implementation decision subject to State Director Review and appeal to IBLA.

Southern Utah Wilderness Alliance et al., 128 IBLA 52 (1993): The Board stated it “does not have jurisdiction over appeals from the approval or amendment of an RMP, but only over actions implementing such a plan.” Accordingly, the Board refused to consider the challenges to the RMP, but considered the impact of the approval of the APD on the surrounding environment.

Colorado Environmental Coalition, 130 IBLA 61 (1994): The appellant challenged the decision of the BLM (Colorado State Office) to offer for sale 14 oil and gas lease parcels. The Board dismissed a part of the appeal, stating that “challenges to the approval or amendment of an RMP and its related EIS are accorded administrative review only under the protest procedures set forth in regulations at 43 CFR Part 1600.” However, the Board did take jurisdiction over that portion of the appeal challenging implementation actions, i.e. the lease sale, and the decision not to prepare a supplemental EIS.

Wild Horses and Burros

A decision to establish general goals and objectives for the management of wild horses and burros, to designate a Herd Management Area (HMA), or to establish the preliminary appropriate management level (AML) for a HMA are land use plan decisions. Decisions to set AML or adjust a preliminary AML based on monitoring, establish an interim AML for purposes of conducting an emergency gather, or conduct a gather in a specific HMA to reach an AML are implementation decisions.

Commission for the Preservation of Wild Horses et al., 139 IBLA 24 (1997): The Board heard an appeal on BLM’s decision regarding the gather plan/EA because it dealt with implementation of the RMP, but refused to hear arguments regarding the RMP and associated amendments, and other planning decisions and documents.

Livestock Grazing

A decision that identifies the area(s) where livestock grazing will be permitted or leased is a land use plan decision. Proposed permit or lease decisions are subject to protest to the Authorized Officer as described in 43 CFR 4160.1. Final decisions on individual grazing leases or on permit applications are implementation decisions subject to administrative remedies as described in 43 CFR 4160.3.

Joel Stamatakis; Steve Stamatakis, 98 IBLA 4 (1987): An appeal from a final BLM decision affirming a proposed decision denying a grazing permittee’s application for change in grazing use is properly referred to the Hearings Division of the Office of Hearings and Appeals, notwithstanding the fact that BLM based its decision on a planning determination to amend the relevant plan.

Off-Highway Vehicles (OHVs) and Travel Management

Decisions designating areas as open, closed, or limited to OHV use and establishing criteria for road and trail selection in areas designated as limited are land use plan decisions. Selection of specific roads and trails as open or closed to motorized travel are implementation decisions, even when made during the planning process, and appealable to IBLA.

Albert Yparraguirre, 105 IBLA 245 (1988): The appellant appealed the BLM's closing of an upper gate of a certain road during fire season while allowing the lower gate to remain open year-round. The road crosses the appellant's private lands, and connects a county road with the Panoche National Cooperative Land and Wildlife Management Area. The gate-closure decision was part of two RMPs. The Board rejected the challenge to the RMPs but heard the arguments regarding the gate closure implementation plan contained in the RMPs.

Rebecca S. Anderson, et al., 145 IBLA 206 (1998): The Board appropriately asserted jurisdiction over specific challenges to a Recreation Area Management Plan (RAMP). "The RAMP is the activity level planning document that describes how the area is to be managed to implement the decision made in the East Lake MFP [Management Framework Plan]."

Timber Sales

A decision to identify lands available for timber management and establish an annual harvest level is a land use plan decision. A decision to conduct an advertised timber sale is protestable to the Authorized Officer (see 43 CFR 5003). The final decision to offer a specific tract of timber for sale is an implementation decision subject to appeal to OHA.

Headwaters, Inc., 116 IBLA 129 (1990): The appellants challenged the validity of a timber sale under NEPA. The Board stated, "It is true that the timber plan establishes a management policy, and that consequently the plan is only subject to final review by the Director, BLM. Nonetheless, the Board does have authority to review a specific action proposed to implement part of a general management plan." Thus, the Board asserted jurisdiction over the challenges to the specific timber sale.

Land Tenure

A decision to classify lands for retention or disposal is a land use plan decision subject to protest while a decision to complete a specific exchange is subject to administrative remedies described in 43 CFR 2201.

Oregon Natural Resources Council, 78 IBLA 124 (1983): The Board did not assume jurisdiction over general challenges to multiple-use designations under an RMP.

Rights-of-Way

A decision to designate lands as a utility corridor along with any general terms and conditions that may apply is a land use plan decision. A decision to approve a right-of-way for a powerline is an implementation decision.

Idaho Natural Resources Legal Foundation, Inc., 96 IBLA 19 (1987): BLM decided to construct a pumping station, a sump pond, and 1½ miles of water pipeline from the pond to a reservoir. The appellant claimed that the applicable RMP/EIS documents failed to discuss or evaluate the pipeline project, as they should have. The Board stated that “the RMP is not the proper basis for us to review BLM’s decision concerning the Echo pipeline project ... the Board does not have jurisdiction over appeals from the approval or amendment of an RMP, but only over actions implementing such a plan.” Accordingly, the Board dismissed the challenges to the RMP, and stated that it would have heard arguments against the specific implementation plan had the appellant filed its appeal timely with the Board.

Wild & Scenic Rivers

Both Sections 5(a) and 5(d) (1) of the Wild and Scenic Rivers Act (WSRA) require determinations to be made regarding a river’s eligibility, classification and suitability. Decisions on the eligibility or a suitability assessment for a river segment conducted during preparation of a RMP are land use plan decisions. Recommendations made by the Secretary as a part of a congressionally authorized study (Section 5(a) of the WSRA) are not subject to protest or appeal since the decision to transmit a recommendation to Congress is a decision made by the Secretary, and decisions made by the Secretary constitute the final decision for the Department. Decisions regarding specific actions related to congressionally authorized WSR corridors are considered implementation decisions.

Deschutes Landowners Committee; Matthew R. Miller, 136 IBLA 105 (1996): The State Director of BLM Oregon denied the protest of the appellants to the Record of Decision (ROD) regarding public access to the Lower Deschutes Wild & Scenic River. The appellants appealed the District Manager’s approval of the ROD, objecting only to the decisions regarding the acquisition, maintenance, and improvement of public access to and along the river. The Board allowed the appeal because the ROD contained specific plans to implement the RMP.